IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 10848 of 2006
Date of decision May 11 , 2007

Anil Kumar

.....Petitioner

Versus

Dakshin Haryana Bijli Vitran Nigam through its Managing Director, Vidyut Nagar, Hisar and others.

.....Respondents

CORAM: HON'BLE MR. JUSTICE P. SATHASIVAM AND
HON'BLE MR. JUSTICE RAJIVE BHALLA

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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Present: Mr. N. D. Achint, Advocate
for the petitioner.

Mr. Gaurav Mohunta, Advocate
for the respondents.

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P. Sathasivam, J.

Aggrieved by the order of the Superintending Engineer/Op. Circle, DHBVNL, Hisar dated 8.2.2006 rejecting the case of the petitioner for appointment on compassionate ground that the petitioner has crossed the age of 30 years at the time of death of his father, the petitioner-Anil Kumar has filed the above writ petition to quash the said order as illegal and arbitrary. He also prayed to issue a writ of mandamus directing the respondents to provide an appointment on compassionate ground.

According to the petitioner his father-Bhim Singh, an employee of DHBVNL, Hisar while working as a Line Man expired on

21.9.2005. He was aged 50 years at the time of his death. The petitioner, being dependent son of the deceased-Bhim Singh had applied for ex-gratia appointment on 25.1.2006 in accordance with Haryana Compassionate Assistance and Employment to the Dependents of Deceased Government Employees Rules-2005.

The third respondent namely Superintending Engineer DHBVNL, Gurgaon by order dated May 8, 2006 rejected the request of the petitioner on the ground that the minimum age prescribed for ex-gratia appointment is 25 years and the same was raised from 25 years to 30 years by the State Government on 20.12.2004, the age of the petitioner at the time of death of his father was more than 30 years which is not permissible. On 26.4.2006 the petitioner again made a representation to reconsider his case and provide a compassionate appointment. Again his request was rejected by order dated 8.2.2006 citing the very same reason, hence the present Civil Writ Petition.

The third respondent Superintending Engineer, Gurgaon filed a written statement wherein it is stated that the petitioner was over 30 years and 9 months of age as his date of birth borne out from Matriculation certificate is 15.3.1975, therefore, he was not eligible for compassionate appointment either under the old rules i.e. Haryana Compassionate Assistance and Employment to the Dependents of Deceased Government Employees Rules-2003 as well as its amended rules wherein the age limit of the dependent of the deceased has been raised from 25 years to 30 years. The amended rules have not been made applicable retrospectively, but Class I and II envisaged therein that the said amendment shall come into force with immediate effect. Thus, the petitioner is not eligible for grant of

compassionate appointment under both the Rules referred to above.

Even under the new rules, the petitioner is not eligible for compassionate appointment. The Haryana Compassionate Assistance and Employment to the Dependents of Deceased Government Employees Rules-2005 published on 18.11.2005 does not have retrospective effect and the petitioner is not at all entitled to claim relief under the said rules. However, as per rules, the family of the deceased employee is eligible to receive the compassionate assistance amounting to Rs.2.50 lacs or monthly financial assistance as provided under the new rules introduced by the State Government. There is no merit in the writ petition and the same deserves to be dismissed.

With the above pleadings we have heard Mr. N. D. Achint, learned counsel for the petitioner and Mr. Gaurav Mohunta, learned counsel for the respondents.

The only point for consideration in this writ petition is whether the petitioner is entitled to compassionate appointment on the death of his father.

It is not in dispute that Bhim Singh, an employee of DHBVNL, Hisar while working as a Line Man expired on 21.9.2005. According to the petitioner, the age of the deceased was 50 years at the time of his death. The petitioner-Anil Kumar being the dependent son of the deceased-Bhim Singh had applied for ex-gratia appointment in accordance with the Haryana Compassionate Assistance and Employment to the Dependents of Deceased Government Employees Rules-2005. Along with the said application, the petitioner enclosed 16 documents in support of his claim for compassionate appointment. The third respondent, though

considered case of the petitioner, the same was rejected on the ground that the age of the petitioner at the time of death of his father was more than 30 years. As per the old rules of 2003 as well as the amended rules dated 17.12.2004, the age limit of the dependent of the deceased has been raised from 25 years to 30 years. As observed earlier, the date of birth of the petitioner is 15.3.1975. It is not in dispute that his father died on 21.9.2005. If we apply the old rules, it is not in dispute that the petitioner had crossed the age of 30 years. As per Haryana Compassionate Assistance and Employment to the Dependents of Deceased Government Employees Rules-2005 (new rules), the upper age of eligible family member for seeking ex-gratia appointment on compassionate ground shall be 35 years. The above said new rules have been notified on 18.11.2005. It is true that as per the said notification, it does not have a retrospective effect but came into force from the date of notification i.e. 18.11.2005. However, it is not in dispute that the application was considered and rejected only on 8.2.2006 i.e. well after the notification of new rules which prescribes upper age as 35 years. It is not the case of the respondents that the petitioner was debarred or ineligible on any other aspects from being considered for compassionate appointment. In fact within a period of four months of the death of his father the petitioner had applied for ex-gratia appointment enclosing copy of 16 documents in support of his claim. In the application the petitioner has specifically pleaded that he belongs to backward class and he was fully dependent on his father and his mother has filed an affidavit to this effect along with as many as 16 documents to substantiate his claim. It is not in dispute that if new rules which were notified on 18.11.2005, the upper age of eligible family member for seeking ex-gratia appointment on

compassionate ground shall be 35 years. It is also not in dispute that on the date of considering his representation, the old rules have been repealed and the new rules of 2005 alone were in existence. Inasmuch as, the petitioner has asserted that the entire family is dependent on the salary/wages of the deceased Bhim Singh and also the fact that petitioner has fulfilled all other conditions by placing the relevant documents and also of the fact that on the date of considering his application new rules alone were available, we are of the view that the respondents ought not to have rejected his claim on the ground that he crossed the age limit of 30 years as per old rules. Considering the family circumstances and loss of bread winner at the age of 50 years and also taking note of the intention of the respondents to provide assistance to the bereaved family it is but proper to consider the claim of the petitioner as per the new rules which alone were available on the date of consideration.

Learned counsel appearing for the respondents by drawing the attention of the Division Bench decision of this Court reported in **2005 (3)RSJ 313** submitted that the respondents are justified in rejecting the claim of the petitioner and the Civil Writ Petition is liable to be dismissed. We verified the factual details of the reported decision. In the said decision, father of the petitioner whilst on duty died on 24.8.2002. There is no definite information in the said decision when the petitioner therein applied for compassionate appointment. No doubt, in **Umesh Kumar Nagpal Vs. State of Haryana** 1994 (3) Service Cases Today 174, the Supreme Court has observed that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. Their Lordships further observed that the object is not to give a

member of such family a post much less a post for post held by the deceased. In the same decision, their Lordships have clarified that the compassionate employment cannot be granted after lapse of reasonable period which must be specified in the rules. In the case on hand, as observed earlier, the petitioner had applied for compassionate appointment within a period of four months after death of his father. It is not the case of the respondents that the application was belated. It is also not their case that the petitioner failed to produce all the required documents in support of his claim. In fact he fulfilled all the conditions by enclosing the required certificates such as original death certificate, matriculation certificate, national certificate, backward class certificate and affidavit from all the other legal heirs. In these circumstances, we are of the view that the decision relied upon by the learned counsel for the respondents is not helpful to their stand.

We are conscious of the fact that compassionate appointments can only be granted in exceptional circumstances and extreme hardship. In the Division Bench decision relied upon by the respondent, the family of the deceased survived for three years without any assistance and application was made only after a considerable period of three years and taking note of the above said relevant aspect the Division Bench concluded that it is indicative of the fact that the family is not without resources and non-suited the claim of the petitioner therein, as such, in the case on hand, the petitioner applied within a period of four months by fulfilling all the required conditions. Moreover the government taking note of grievance and various representations from their employees amended the rules by relaxing several conditions including increasing the upper age limit.

In the facts and circumstances and the discussion, we are satisfied that the impugned order and ultimate decision rejecting the claim of the petitioner for compassionate appointment cannot be sustained. Accordingly , the impugned order Annexure P-2 issued on 8.2.2006 by the second respondent is quashed and he is directed to consider the claim of the petitioner for compassionate appointment as per our above discussion and pass orders within a period of eight weeks from the date of receipt of certified copy of this order.

Civil Writ Petition is allowed on the above terms. No costs.

(P. SATHASIVAM)
JUDGE

May 11 , 2007 **(RAJIVE BHALLA)**
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